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PATENT COOPERATION TREATY

From the:
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

F B Rice & Co
605 Darling Street
BALMAIN NSW 2041

PCT

WRITTEN OPINION
(PCT Rule 66)

Date of mailing (day/month/year) 08 OCT 2003	
Applicant's or agent's file reference 113989	REPLY DUE within TWO MONTHS from the above date of mailing
International Application No. PCT/AU03/00281	International Filing Date (day/month/year) 10 March 2003
	Priority Date (day/month/year) 8 March 2002
International Patent Classification (IPC) or both national classification and IPC Int. Cl. ⁷ A61N 1/378, H04R 25/00	
Applicant COCHLEAR LIMITED et al	

- This written opinion is the **first** drawn by this International Preliminary Examining Authority.
- This opinion contains indications relating to the following items:
 - ☒ Basis of the opinion
 - ☐ Priority
 - ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - ☒ Lack of unity of invention
 - ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - ☐ Certain documents cited
 - ☐ Certain defects in the international application
 - ☒ Certain observations on the international application
- The **FINAL DATE** by which the international preliminary examination report must be established according to Rule 69.2 is:
8 July 2004

The applicant is hereby invited to reply to this opinion.

- When?** See the **Reply Due** date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the **Final Date** by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. **If no response is filed by 1 month before the Final Date**, the international preliminary examination report will be established on the basis of this opinion.
- Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least **3 months before the Final Date** by which the international preliminary examination report must be established.
- How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3.
For the form and the language of the amendments, see Rules 66.8 and 66.9.
- Also** For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.
For an informal communication with the examiner, see Rule 66.6.

Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustalia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer S KAUL Telephone No. (02) 6283 2182
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I. Basis of the opinion

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,
pages , as amended under Article 19,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of

- ☐ the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

** Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*

IV. Lack of unity of invention

1. In response to the invitation (Form PCT/IPEA/405) to restrict or pay additional fees the applicant has:

- ☐ restricted the claims.
- ☐ paid additional fees.
- ☐ paid additional fees under protest.
- ☐ neither restricted nor paid additional fees.

2. This Authority found that the requirement of unity of invention is not complied with for the following reasons and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees:

- (a) Independent claim 1 defines an implantable component of a cochlear implant system comprising a housing for a stimulator unit, a receiver antenna and an electrode assembly. The housing and/or the receiver antenna can be moved from a first implanted position to a second implanted position without the removal of the electrode assembly from the recipients' cochlear. Independent claim 2 defines an implantable component of a cochlear implant system comprising a housing for a stimulator unit, a receiver antenna and an electrode assembly. The housing is adjustable about a lateral axis despite implantation of the electrode assembly. Independent claim 18 defines a method of adjusting the position of an implanted cochlear device by rotating the housing about a lateral axis. Independent claim 38 defines a cochlear implant system capable of operating in a magnet and magnetless manner, where the implanted stimulator unit is implantable in a first or at least a second orientation. Claims 3 to 17, 19 to 21 and 32 to 34 are dependent upon these claims..
- (b) Independent claim 22 defines an external component of a cochlear implant system comprising a support for mounting to the ear of the recipient and an external signal transmitter antenna which is movably mounted to a portion of the support. Claims 23-31 are dependent upon these claims. Claim 24 also refers to claims 1 or 2
- (c) Independent claim 35 defines an implantable component of a cochlear implant system as defined above, where the housing is substantially symmetrical about a longitudinal plane. In addition, claim 36 defines a housing, which is also symmetrical about a lateral plane. Independent claim 37 defines an implantable component of a cochlear implant system as defined above, where the housing is substantially symmetrical about a lateral plane.

3. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:

- ☒ all parts.
- ☐ the parts relating to claims Nos.

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement:

1. Statement

Novelty (N)	Claims 1-34, 38	YES
	Claims 35-37	NO
Inventive step (IS)	Claims 1-34, 38	YES
	Claims 35-37	NO
Industrial applicability (IA)	Claims 1-38	YES
	Claims	NO

2. Citations and explanations

NOVELTY (N)

D1 US 6246911B1, refer in particular figures 2a and 2b.

Claims 35-37:

D1 discloses all the features of these claims.

INVENTIVE STEP (IS)

Claims 35-37:

As under novelty above.

VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

Claims 35-37 do not adequately define the invention in terms of a device that can be implanted in a number of orientations/ position adjustable after implanting, which seems to be a feature necessary to meet the object of the invention.